

Attorney Docket No.: RTS-0327  
Inventors: Baker et al.  
Serial No.: 10/000,213  
Filing Date: November 14, 2001  
Page 2

Group II, claims 1, 10 and 20, drawn to compounds targeted to VDR-type I, classifiable in class 431 subclasses 6, 31.1, 328, 366 and 375, class 536 subclass 23.1, 24.31, 24.33, and 24.5 and class 514, subclass 44;

Group III, claims 7, 19, and 23 drawn to compounds targeted to VDR-type-II, classifiable in class 435 subclasses 6, 31.1, 328, 366 and 375, class 536 subclass 23.1, 24.31, 24.33, and 24.5 and class 514, subclass 44;

Group IV, claims 1, 19, and 20 drawn to compounds targeted to VDR-type III, classifiable in class 438, subclasses 438 subclasses 6, 31.1, 328, 366 and 375, class 536 subclass 23.1, 24.31, 24.33, and 24.5 and class 514, subclass 44;

Group V, claims drawn to compounds targeted to VDR-type IV, classifiable in class 438, subclasses 438 subclasses 6, 31.1, 328, 366 and 375, class 536 subclass 23.1, 24.31, 24.33, and 24.5 and class 514, subclass 44.

The Examiner suggests that Groups I through V as set forth above are distinct, apart from the other, because they are each drawn to nuclear acid compounds which target different target gene sequences, i.e., VDR-type I, VDR-type II, VDR-type III, and VDR-type IV respectively. The Examiner further suggests that the

Attorney Eockett No.: RTS-0327  
Inventors: Baker et al.  
Serial No.: 10/000,213  
Filing Date: November 14, 2001  
Page 3

search required for each Group is not required for the other Groups.

The Examiner suggests that claim 2 specifically recites multiple antisense sequence identification numbers each of which is targeted to and modulates the expression of the gene vitamin D nuclear receptor (VDR). The Examiner suggests that the recited sequences of claim 3 are unrelated as each is structurally and functionally independent and distinct. The Examiner further suggests that a search of more than one of the antisense sequences claimed in claim 3 presents an undue burden on the PTO due to the complex nature of the search. The Examiner has required that upon election of Group 1, Applicants must elect one species. Applicants respectfully traverse this restriction requirement.

At the outset, claim 1 has been amended and claim 3 has been amended to clarify that the claimed invention is an antisense compound targeted to a single disclosed species of vitamin D nuclear receptor, namely, SEQ ID NO: 1. Support for this amendment is found throughout the specification and at pages 33-34. Applicants believe that these amendments satisfy the species election requirement.

The protest which must set forth a restriction requirement in proper and clear form in MPEP §103 and include (1) that the

Attorney Record No.: RTS-0327  
Inventors: Baker et al.  
Serial No.: 10/000,213  
Filing Date: November 14, 2001  
Page 5

inventions be independent or distinct and (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Clearly, Groups I through V all contain claims with the same elements or technical features, namely, a compound 9 to 50 nucleobases or longer targeted to a nucleic acid molecule encoding human vitamin D nuclear receptor (SEQ ID NO 3). Accordingly these groups do not meet the definition of distinct.

Further, there would be no burden on the Examiner due to additional searching, if the restriction is not made. Clearly any search performed to the identify art relating to the human vitamin D nuclear receptor would identify the relevant art to all of the Groups.

Accordingly, since the instant restriction requirement fails to meet either of the two criteria for proper restriction, proper deletion and allowance of this Restriction Requirement is respectfully requested.

Re: Patent No.: RTS-0327  
Inventors: Baker et al.  
Serial No.: 10/000,213  
Filing Date: November 14, 2001  
Page 6

In an earnest effort to be completely responsive, however, Applicants elect to prosecute Group I, claims 1-16, with traverse.

Attached hereto is a marked up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

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Attorney Docket No.: RTS-0327  
Inventors: Baker et al.  
Serial No.: 10/000,213  
Filing Date: November 14, 2001  
Page 7

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the claims:

Claim 3 has been canceled.

Claim 1 has been amended as follows:

1. (Amended) A compound 8 to 10 nucleobases in length targeted to a nucleic acid molecule encoding human vitamin D nuclear receptor (NR2B), wherein said compound specifically hybridizes with said nucleic acid molecule encoding human vitamin D nuclear receptor and inhibits the expression of human vitamin D nuclear receptor.